

JUDGE SCHEINDLIN

12 CIV 8100 (SAS)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY and MARIA  
SACCHETTI,

Plaintiffs,

- against -

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY,

Defendant.



COMPLAINT

ECF CASE

Plaintiffs The New York Times Company and Maria Sacchetti, by their undersigned attorneys, allege for their Complaint:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), to order the production of agency records and information improperly withheld by Defendant in response to a request properly made by Plaintiffs.

2. The Office of U.S. Immigration and Customs Enforcement ("ICE") is a component of Defendant United States Department of Homeland Security ("DHS"). Under FOIA, DHS, through ICE, has denied Plaintiffs full access to a document listing aliens who were convicted of criminal charges and to be deported to their home countries following sentencing but were instead set free. Specifically, DHS has declined to provide the names of the persons on the list.

### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

4. Venue is premised on the place of business of Plaintiffs and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

### **PARTIES**

5. Plaintiff The New York Times Company operates The Boston Globe (“The Globe”) through a subsidiary and is the ultimate owner of The Globe. The New York Times Company is headquartered in this judicial district at 620 Eighth Avenue, New York, N.Y.

6. Plaintiff Maria Sacchetti is a reporter for The Globe.

7. Defendant DHS is an agency of the federal government that has possession and control of the record that Plaintiffs seek and is subject to FOIA.

### **FACTS**

8. On or about September 28, 2011, Ms. Sacchetti submitted a FOIA request to DHS through ICE (the “Request”) seeking records showing the “names, crimes, and last-known states of residence of convicted criminals who have been released in the United States after serving their sentences because ICE could not deport them, and the reasons they were not deported.” (Ms. Sacchetti later resubmitted the Request on or about November 21, 2011 after DHS was unable to locate it.)

9. On or about December 22, 2011, after conferring with ICE, Ms. Sacchetti modified the Request and limited the scope of it to a “list of convicted criminal aliens” released pursuant to the Supreme Court’s decision in *Zadvydas v. Davis*.

10. On or about January 24, 2012, DHS disclosed that it had one responsive document, a spreadsheet (the “Releasee Spreadsheet”). By a letter (the “Partial Denial”), the agency said it would produce a redacted version of the Releasee Spreadsheet withholding the names of the aliens.

11. The agency asserted that the names could be withheld under FOIA Exemptions 6 and 7(C), both of which allow withholding of information under certain circumstances where release would constitute an “unwarranted invasion of personal privacy.”

12. On or about February 24, 2012, Ms. Sacchetti submitted an administrative appeal challenging the Partial Denial. Ms. Sacchetti noted that all the persons on the Releasee Spreadsheet had been convicted of crimes and their names were therefore a matter of public record.

13. In fact, each of the aliens on the Releasee Spreadsheet was to have been deported to his or her home country following his or her criminal conviction.

14. For reasons that cannot be determined without access to the names, each of the aliens on the Releasee Spreadsheet have instead been set free by DHS, and several have since committed new crimes in the United States.

15. It is unclear, without access to the names, whether DHS is performing its duties lawfully and adequately – for instance, whether it is making considered judgments as to whether a convicted alien is likely to commit a crime again, whether it is engaging in a pattern of discrimination as to who will be released, whether the releases are consistent with findings made

by the trial courts in the criminal prosecutions of the convicted aliens, and whether notification of release has been made to victims and law enforcement.

16. On April 20, 2012, DHS through ICE denied the administrative appeal, reasserting the same exemptions as contained in the Partial Denial.

### **CAUSE OF ACTION**

17. Plaintiffs repeat, reallege and incorporate the allegations in the foregoing paragraphs as though fully set forth herein.

18. DHS is an agency subject to FOIA, 5 U.S.C. § 552(f), and must therefore release in response to a FOIA request any records in its possession at the time of the request not subject to an exemption and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

19. DHS has asserted no lawful basis under FOIA for withholding the names of the convicted aliens on Releasee Spreadsheet.

20. DHS's failure to provide this information violates FOIA generally, and specifically 5 U.S.C. § 552(a)(3).

21. Plaintiffs are entitled to an order compelling DHS to produce this information.



**REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully requests that this Court:

- a. Declare that the redacted information identifying individuals on the Releasee Spreadsheet is public under 5 U.S.C. § 552;
- b. Order DHS to provide those records to Plaintiffs within 20 business days of the Court's order;
- c. Award Plaintiffs the costs of this proceeding, including reasonable attorney's fees, as expressly permitted by FOIA; and
- d. Grant Plaintiffs such other and further relief as this Court deems just and proper.

Dated: New York, New York  
November 5, 2012



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